



Court File No. **VLC-S-S-131295**

No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

A. K. CAMPBELL

PLAINTIFF

AND:

GEORGIA PROPERTIES PARTNERSHIP, 0729909 B.C. LTD., GEORGIA
TRUST (2005), and HOTEL GEORGIA MANAGEMENT LTD.

DEFENDANTS

NOTICE OF CIVIL CLAIM

FORM 1 (RULE 3-1(1))

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

PART 1: STATEMENT OF FACTS

1. The plaintiff, A. K. Campbell, has an address for service at 3200 - 650 West Georgia Street, in the City of Vancouver, in the Province of British Columbia.
2. The defendant Georgia Properties Partnership ("GPP") is a developer of a development known as the Private Residences at Hotel Georgia (the "Development").
3. GPP is a general partnership formed under the laws of the Province of British Columbia between the defendant 0729909 B.C. Ltd. and the defendant Georgia Trust (2005).
4. The defendant 0729909 B.C. Ltd., a company incorporated pursuant to the laws of the Province of British Columbia with a registered and records office of 3000 Royal Centre, P.O. Box 11130, 1055 West Georgia Street, in the City of Vancouver, in the province of British Columbia, is the managing partner of GPP.
5. The defendant Hotel Georgia Management Ltd., a company incorporated pursuant to the laws of the Province of British Columbia with a registered and records office of 3000 Royal Centre, P.O. Box 11130, 1055 West Georgia Street, in the City of Vancouver, in the province of British Columbia, is the trustee of the Georgia Trust (2005).

The Real Estate Development Marketing Act

6. The Development is subject to the *Real Estate Development Marketing Act*, S.B.C. 2004, c. 41 ("REDMA").
7. Section 1 of REDMA provides:
 - (a) "developer" means a person who directly, or indirectly, owns, leases or has a right to acquire or dispose of development property;
 - (b) "development property" means, *inter alia*, 5 or more strata lots in a stratified building or two or more shared interests in land in the same parcel of land;
 - (c) "development unit" means, *inter alia*, a strata lot or a shared interest in land;

- (d) “disclosure statement” means a statement that discloses material facts about a development property, prepared in accordance with section 14(2), and includes any amendment made to a disclosure statement;
 - (e) “material fact” means, in relation to a development unit or development property, any of the following:
 - (a) a fact, or a proposal to do something, that affects, or could reasonably be expected to affect, the value, price, or use of the development unit or development property;
 - (b) the identity of the developer;
 - (c) the appointment, in respect of the developer, of a receiver, liquidator or trustee in bankruptcy, or other similar person acting under the authority of a court;
 - (d) any other prescribed matter;
 - (f) “misrepresentation” means
 - (a) a false or misleading statement of a material fact, or
 - (b) an omission to state a material fact;
 - (g) “purchase agreement” means a contract of purchase and sale or a contract to lease; and
 - (h) “purchaser” means, *inter alia*, a prospective purchaser or lessee, from a developer, of a development unit.
8. Section 2 of *REDMA* provides that the legislation applies to a developer who markets, in British Columbia, a development unit.
9. Section 14 of *REDMA* provides that a developer must not market a development unit unless the developer has prepared a disclosure statement respecting the development property in which the development unit is located, and filed with the superintendent the disclosure statement. A disclosure statement must, without misrepresentation, plainly disclose all material facts.

10. Section 16 of *REDMA* provides that if a developer becomes aware that a disclosure statement does not comply with *REDMA* or contains a misrepresentation, the developer must immediately file with the superintendent a new disclosure statement, or an amendment to the disclosure statement that clearly identifies and corrects the failure to comply or the misrepresentation, and within a reasonable time after filing a new disclosure statement or an amendment, provide a copy of the disclosure statement or amendment to each purchaser.
11. Section 18 of *REDMA* provides that a developer who receives a deposit from a purchaser in relation to a development unit must promptly place the deposit with a brokerage, lawyer, notary public, or prescribed person who must hold the deposit as trustee in a trust account in a savings institution in British Columbia, and such person holds the deposit for the developer and the purchaser and not as agent for either of them.
12. Section 23 of *REDMA* provides that a promise or agreement to purchase or lease a development unit is not enforceable against a purchaser by a developer who has breached any provision of Part 2 of *REDMA*. Sections 14 and 16 of *REDMA* are provisions of Part 2 of *REDMA*.

Marketing of the Development

13. In or around September 2007, the defendants began marketing strata lots in the Development on a pre-sale basis. Construction of the Development was scheduled to commence in May 2008.
14. On or about September 12, 2007, a disclosure statement was filed in relation to Development (the “original disclosure statement”).
15. The original disclosure statement set a construction completion date for the Development of December 2011.
16. A construction completion date is a material fact.
17. On or about October 19, 2007, the plaintiff entered into a contract of purchase and sale with the defendants to purchase Strata Lot 52, Suite No. 2402 in the Development.

18. The plaintiff paid a total deposit of \$368,000.
19. Prior to December 2011, the defendants filed amendments to the original disclosure statement on the following dates: the first amendment, October 18, 2007; the second amendment, July 8, 2008; the third amendment, August 3, 2010; and the fourth amendment, June 29, 2011.
20. Construction of the Development was not complete in December 2011.
21. Prior to December 2011 the defendants knew or ought to have known that construction of the Development would not be complete by December 2011 and, accordingly, the December 2011 construction completion date was a misrepresentation of a material fact.
22. On January 1, 2012, after the December 2011 construction completion date had passed, the defendants did not immediately file an amendment identifying and correcting the misrepresentation in relation to the December 2011 construction completion date.
23. On January 29, 2012, the defendants filed a fifth amendment to the original disclosure statement. The fifth amendment did not amend the December 2011 construction completion date.
24. On April 24, 2012, the defendants informed the plaintiff that construction of the Development is anticipated to be completed in the last quarter of 2012.
25. On May 18, 2012, an action was commenced by C.H. Lee in Vancouver Registry No. S-123598 in relation to the misrepresentation with respect to the December 2011 construction completion date in the original disclosure statement.
26. On May 22, 2012, the defendants filed a sixth amendment to the original disclosure statement, extending the December 2011 construction completion date to October 31, 2012.
27. On or about September 24, 2012, the defendants served the plaintiff with a notice of completion for December 17, 2012.

28. Prior to October 31, 2012, the defendants knew or ought to have known that construction of the Development would not be complete by October 31, 2012, and, accordingly, the October 31, 2012 construction completion date was a misrepresentation of a material fact. The defendants did not immediately file an amendment identifying and correcting the misrepresentation in relation to the October 31, 2012 construction completion date.
29. On December 14, 2012, the defendants filed a seventh amendment to the original disclosure statement, extending the October 31, 2012 construction completion date to December 20, 2012.
30. On December 17, 2012, the defendants served the plaintiff with a notice of delay of the completion date, dated December 14, 2012, extending the completion date from December 20, 2012 to January 16, 2013.
31. Prior to December 14, 2012, the defendants knew or ought to have known that construction of the Development would not be complete by December 20, 2012, and, accordingly, the December 20, 2012 construction completion date was a misrepresentation of a material fact. The defendants did not immediately file an amendment identifying and correcting the misrepresentation in relation to the December 20, 2012 construction completion date.

PART 2: RELIEF SOUGHT

32. The plaintiff claims against the defendants for:
 - (a) a declaration that the defendants breached Part 2 of *REDMA*;
 - (b) a declaration that the plaintiff's contract of purchase and sale is unenforceable;
 - (c) an order requiring the return of the deposit and all accrued interest;
 - (d) costs; and
 - (e) such other and further relief as to this honourable Court may seem meet and just.

PART 3: LEGAL BASIS

33. The plaintiff entered into a contract of purchase and sale with the defendants in relation to the Development.
34. The original disclosure statement set a construction completion date for the Development of December 2011. The December 2011 construction completion date became a misrepresentation.
35. The sixth amended disclosure statement set a construction completion date for the Development of October 31, 2012. The October 31, 2012 construction completion date became a misrepresentation.
36. The seventh amended disclosure statement set a construction completion date for the Development of December 20, 2012. The December 20, 2012 construction completion date became a misrepresentation.
37. Pursuant to s. 16 of *REDMA*, when the defendants became aware that the original disclosure statement, sixth amended disclosure statement, and seventh amended disclosure statement each contained a misrepresentation the defendants were required to immediately file an amendment. The defendants did not immediately file an amendment to the original disclosure statement, sixth amended disclosure statement, or seventh amended disclosure statement and, accordingly, breached Part 2 of *REDMA*.
38. Pursuant to s. 23 of *REDMA*, the plaintiff's contract of purchase and sale is not enforceable.
39. Because of the defendants' breach, the plaintiff is entitled to return of the deposit and all accrued interest.

(1) The plaintiff's address for service is:

HARPER GREY LLP
Barristers and Solicitors
3200 - 650 West Georgia Street
Vancouver, BC V6B 4P7

Fax number for service: (604) 669-9385

(2) Place of trial: The Law Courts, 800 Smithe Street, Vancouver, British Columbia

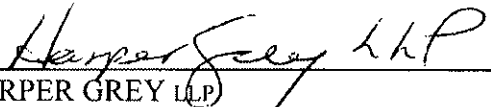
The address of the registry is:

800 Smithe Street
Vancouver, BC V6Z 2E1

(3) The name and office address of the plaintiff's solicitor is:

HARPER GREY LLP
Barristers & Solicitors
3200 - 650 West Georgia Street
Vancouver, BC V6B 4P7
Telephone: (604) 687-0411
Fax: (604) 669-9385
Attn: Bryan G. Baynham, Q.C.
File No. 124614

Dated: February 21, 2013


HARPER GREY LLP
(Per: Bryan G. Baynham, Q.C.)
Lawyer for the plaintiff

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

PART 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This is an action in relation to the sale of a pre-sale unit in the Private Residences at Hotel Georgia.

PART 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- ☐ a motor vehicle accident
- ☐ medical malpractice
- ☐ another cause

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☒ real property (real estate)
- ☐ personal property
- ☐ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☐ an employment relationship
- ☐ a will or other issues concerning the probate of an estate
- ☐ a matter not listed here

PART 3: THIS CLAIM INVOLVES:

- ☐ a class action
- ☐ maritime law
- ☐ aboriginal law
- ☐ constitutional law
- ☐ conflict of laws
- ☒ none of the above
- ☐ do not know

PART 4:

Real Estate Development Marketing Act, S.B.C. 2004, c. 41



No. S131295
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

A.K. CAMPBELL

PLAINTIFF

AND:

GEORGIA PROPERTIES PARTNERSHIP, 0729909 B.C. LTD.,
GEORGIA TRUST (2005), AND HOTEL GEORGIA
MANAGEMENT LTD.

DEFENDANTS

NOTICE OF TRIAL

FORM 40 (RULE 12-1(2))
[AM BC REG. 95/2011, SCH. A, S. 15]

Filed by: the plaintiff

TAKE NOTICE that the trial of this proceeding has been set down at the following place, date and time:

City	Vancouver
Address of Courthouse	800 Smithe Street, Vancouver, BC
Date	January 21, 2014
Time	10:00 a.m.

Digitally signed by
Peralta, Elsa

Registrar

The place of trial set out above is:

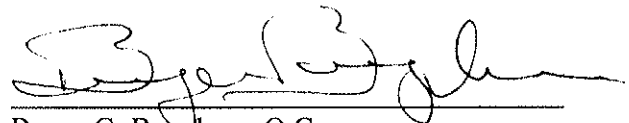
- ☒ the place of trial set out in the notice of civil claim.
- ☐ set out in the order of this Honourable Court dated ddmmmyyyy.

- ☒ All parties of record in this action agree that not more than 3 days is a reasonable time for the hearing of all evidence and argument in this action.
- ☐ There is a disagreement as to the estimate of a reasonable time for the hearing of all evidence and argument in this action. The estimates of the parties of record are as follows:

Name of Party	Time Estimate

I undertake to pay all hearing fees payable under Appendix C, Schedule 1, Item 10.

Date: February 25, 2013



Bryan G. Baynham, Q.C.
Harper Grey LLP (Counsel for the plaintiff)

Contact information for the parties and their lawyers is as follows:

Counsel for the plaintiff: Bryan G. Baynham, Q.C. Harper Grey LLP Barristers & Solicitors 3200 – 650 West Georgia Street Vancouver, BC V6B 4P7 Tel: 604-895-2802 Fax: 604-669-9385 E-mail: bbaynham@harpergrey.com	Counsel for the defendants: J. Kenneth McEwan, Q.C. Hunter Litigation Chambers Law Corporation 2100 – 1040 West Georgia Street Vancouver, BC V6E 4H1 Tel: 604-647-3536 Fax 604-647-4554 E-mail: kmcewan@litigationchambers.com
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

APPENDIX

Part 1: THIS CLAIM INVOLVES THE FOLLOWING:

- ☐ a motor vehicle accident
- ☐ a personal injury, other than one arising from a motor vehicle accident
- ☒ a dispute about real property (real estate)
- ☐ a dispute about personal property

- ☐ the lending of money
- ☐ the provision of goods or services or other general commercial matters
- ☐ an employment relationship
- ☐ a dispute about a will or other issues concerning the probate of an estate
- ☐ a matter not listed here

Part 2:



No. S131295
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

A.K. CAMPBELL

PLAINTIFF

AND:

GEORGIA PROPERTIES PARTNERSHIP, 0729909 B.C. LTD.,
GEORGIA TRUST (2005), AND HOTEL GEORGIA
MANAGEMENT LTD.

DEFENDANTS

NOTICE OF TRIAL

FORM 40 (RULE 12-1(2))
[AM BC REG. 95/2011, SCH. A, S. 15]

Filed by: the plaintiff

TAKE NOTICE that the trial of this proceeding has been set down at the following place, date and time:

City	Vancouver
Address of Courthouse	800 Smithe Street, Vancouver, BC
Date	January 21, 2014
Time	10:00 a.m.

Digitally signed by
Peralta, Elsa

Registrar

The place of trial set out above is:


- ☒ the place of trial set out in the notice of civil claim.
- ☐ set out in the order of this Honourable Court dated ddmmmyyyy.

- ☒ All parties of record in this action agree that not more than 3 days is a reasonable time for the hearing of all evidence and argument in this action.
- ☐ There is a disagreement as to the estimate of a reasonable time for the hearing of all evidence and argument in this action. The estimates of the parties of record are as follows:

Name of Party	Time Estimate

I undertake to pay all hearing fees payable under Appendix C, Schedule 1, Item 10.

Date: February 25, 2013


Bryan G. Baynham, Q.C.
Harper Grey LLP (Counsel for the plaintiff)

Contact information for the parties and their lawyers is as follows:

Counsel for the plaintiff: Bryan G. Baynham, Q.C. Harper Grey LLP Barristers & Solicitors 3200 – 650 West Georgia Street Vancouver, BC V6B 4P7 Tel: 604-895-2802 Fax: 604-669-9385 E-mail: bbaynham@harpergrey.com	Counsel for the defendants: J. Kenneth McEwan, Q.C. Hunter Litigation Chambers Law Corporation 2100 – 1040 West Georgia Street Vancouver, BC V6E 4H1 Tel: 604-647-3536 Fax 604-647-4554 E-mail: kmcewan@litigationchambers.com
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

APPENDIX

Part 1: THIS CLAIM INVOLVES THE FOLLOWING:

- ☐ a motor vehicle accident
- ☐ a personal injury, other than one arising from a motor vehicle accident
- ☒ a dispute about real property (real estate)
- ☐ a dispute about personal property

- ☐ the lending of money
- ☐ the provision of goods or services or other general commercial matters
- ☐ an employment relationship
- ☐ a dispute about a will or other issues concerning the probate of an estate
- ☐ a matter not listed here

Part 2: